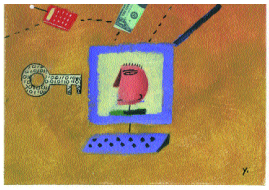


Electronic commerce is more than ordering a book on the Internet. It's about obtaining information on product availability, quality, and price. It's about identifying alternative sources of supply and obtaining information on the reliability and reputation of alternative suppliers. It's about placing an order and tracking product delivery. And it's about being secure in knowing that your electronic contract, signature, and payment are beyond compromise.

Yes, electronic commerce is transforming the marketplace. It is eliminating geographic boundaries and opening the world to buyers and sellers. Members of the Business Software Alliance (BSA) are leading the way in developing the technologies that help make it happen.

SOFTWARE: LEADING THE WAY

Today, the software industry is developing new and better ways of getting in, getting out, and getting going online. Developers of World Wide Web sites are using software technology to unlock the display case and give consumers instant access to services and products. Software developers are providing complete business solutions for companies online — automating everything from billing and accounting to shipping, fulfillment, and inventory replenishment. Software developers are providing online security with state-of-the-art encryption products. And independent service providers and site developers are offering complete electronic commerce management services.

UNPRECEDENTED ECONOMIC OPPORTUNITY

Government statistics show that traffic on the Internet doubles every 100 days, and that 8.2 percent of our economy is devoted to Internet technology. Predictions of business-to-business Internet commerce for the year 2000 range from $66 billion to $171 billion, and, by 2002, electronic commerce between businesses is expected to reach $300 billion. Studies indicate that advertising spending on the Internet reached $1 billion in 1997, triple the amount spent in 1996. Why? Because according to the Internet Demographic Study by CommerceNet/Nielsen, more than 10 million people in North America alone have purchased something over the Internet, and four times that many have obtained product and price information on the Internet only to make the final purchase off-line. International Data Corporaton predicts that by 2000, at least 46 million Americans will purchase products or services online, spending an average of $350 per person per year.

Examples of Internet efficiency gains and user growth are almost infinite. A traditional banking transaction costs a mere penny conducted over the Internet. Already two million people bank from their homes and as many as 15 million are expected to do so within the next few years. Online investing is predicted to grow from three million users to over 14 million by 2002. Investors have much more information available to them through the Internet and prefer to make decisions themselves rather than pay a premium to trade through a traditional broker. Discount brokers now perform online broker services for at least one-sixth of all accounts.

Prior to electronic commerce, administrative costs of typical low-dollar purchasing orders were at least a third of the cost of the order. But new technology greatly increases this margin by decreasing the labor costs involved in processing orders and improving supply management. MasterCard International utilizes a fully integrated electronic procurement system that immediately aggregates purchasing data, categorizes purchases by commodity type, and transfers all transactions to the general ledger. ("Electronic Procurement," *Emmerce*, March 9, 1998)

Among industries using the Internet to sell their products, computer manufacturers and software publishers have benefited tremendously. A leading manufacturer sold $3 million in computer hardware and software online each day in 1997 for a total of $11 billion during the year. Another recently launched an Internet service that includes an information directory for users as well as a fee-based library for research and education. A retail store, Egghead, shifted its focus to electronic commerce entirely and closed its street stores.

Yes, electronic commerce is about more than buying a book on the Internet, but Internet book-buying built confidence, taught us lessons, and blazed the trail. Electronic commerce revolutionizes business transactions by more than lowering costs; it encourages the development of an interactive and participatory relationship between the parties involved. At Amazon.com for example, consumers can log onto the web page and find not only book reviews, links to related materials, and links to other works by authors, they can also interact with the company by writing and posting their own reviews as well as provide information on their interests and receive messages about newly-published books. Firefly's BigNote is an online music store that allows visitors to listen to new music, learn about the artists, and talk with other customers, as well as purchase the music. Customers rate the music they are listening to and learn about other customers' preferences. The content of the "store" is really created by the customer community itself. The more customers get involved in the site, the more it grows and attracts others to become involved. The virtual community interaction differentiates the company and the product from its physical counterparts. Online music sales are predicted to reach $186 million by 2000.

SOFTWARE: THE ULTIMATE SOLUTION

While the Internet is convenient, fast and fun — it is not currently suited to all types of business and commercial transactions. For example, today the Internet is not capable of presenting some important product characteristics, such as textures, fits, and feels, that are critical when purchasing certain products. Cyberspace is not now conducive to selling high-priced, high-touch goods like silk scarves and leather purses.

But software developers are working to provide a full experience to the electronic commerce shopper. Virtual companies are improving presentations over the Internet through the use of video, voice, and 3-D images. Some sites offer toll-free numbers for customers who want to speak with a site representative or make a purchase over the telephone. Furniture stores on the Internet help customers create rooms similar to ones in their homes, and then give them the chance to "click and drag" furniture from the virtual store to the virtual rooms to try different styles and arrangements.

Likewise, the concern of Internet users over the protection of their personal data and of businesses over the security of propriety information communicated online often limits the type and breadth of commerce done on the Internet. Increasingly, however, software technology gives consumers the tools to protect personal data, can secure the most sensitive of business, financial and medical information, and can help to authenticate online transactions. Software is providing consumers and businesses in the electronic marketplace confidence, security, and efficiency.

PIRACY AND POLICY ISSUES POSE THE BIGGEST BARRIERS

The software industry can solve the technical challenges facing our ability to take full advantage of the benefits of electronic commerce. Just look at the technological advancement within the past five years. But many important barriers have little if anything to do with the technology. They are barriers rooted in cultural differences and political objectives, and they pose the greatest risk to the realization of a worldwide electronic marketplace of products, information, and ideas. The most critical risks to the growth of electronic commerce include the age-old problem of piracy, and government imposed regulations, policies, and taxes that unnecessarily burden the Internet.

Piracy of creative property, such as software, music, books, and film, is not exactly the sort of piracy that first comes to mind. The home of today's pirate is no longer the boundless sea, but the fast and efficient Internet. Online, pirates are reaping profits on a grand scale — stealing the creative output of hardworking software designers, programmers and engineers, authors, and composers — removing their economic incentive for creation and innovation.

Since 1988, the Business Software Alliance (BSA) has been the voice of the world's leading software developers before governments and with consumers in the international marketplace. Its members represent the fastest growing industry in the world. BSA educates computer users on software copyrights; advocates public policy that fosters innovation and expands trade opportunities; and fights software piracy. BSA worldwide members include Adobe, Autodesk, Bentley Systems, Lotus Development, Microsoft, Novell and Symantec. Additional members of BSA's Policy Council include Apple Computer, Compaq, Digital Equipment Corp., IBM, Intel, Intuit, and Sybase.

BSA's objectives, like other players in the electronic marketplace, are to have: electronic commerce conducted in a safe and secure environment for businesses and consumers; strong copyright protection for software; generous use of market-based approaches to promoting a competitive marketplace and a level playing field, and; electronic commerce unfettered by national or state taxes and excessive regulation. To that end, BSA is working around the world to modernize the rules of electronic commerce. Our goal is to improve copyright protection worldwide in traditional and online commerce and to establish new, innovative and non-cumbersome policies for the new electronic marketplace.

In the following pages, BSA member companies layout their vision for the future of electronic commerce by addressing eight public policy issues that are critical to the growth of online commerce.

Protecting creative works: Effective copyright protection and enforcement are critical to facilitating e-commerce

TODAY'S WORLD

Strong copyright protection for creative works is crucial to the success of e-commerce. In the "analog world," protection of creative material has given authors and other creators powerful incentives to develop exciting new products. The United States leads the world in many high-tech industries largely because strong copyright protection gives entrepreneurs the confidence to invest in developing cutting-edge technologies. Protecting creative works is even more critical in the online world of e-commerce, where it is possible to make unlimited perfect copies of works and distribute them worldwide in a matter of seconds. It is no wonder that digital piracy — the online theft of creative property — poses one of the single greatest threats to the success of e-commerce.

Existing intellectual property laws need to be observed in the digital environment. Marketplace forces should determine how creators commercialize their intellectual property rights, not intrusive policies aimed at "managing" the development and dissemination of technology.

Piracy is a huge problem for the software industry worldwide. In some countries, copyright protection for software is virtually unheard of and enforcement is often nonexistent. In these countries, pirated goods often account for over 90% of all creative works sold. Piracy losses for software are estimated at billions of dollars worldwide each year. E-commerce gives pirates the opportunity to do their work better, potentially resulting in even greater losses for the industry.

TOMORROW'S WORLD

In order for e-commerce to thrive, the Business Software Alliance (BSA) believes that everyone in the electronic marketplace must be responsible for making the market work — foremost by respecting the copyrights of creative works. Copyright protection in the online world needs to be as strong as in the analog world.

Establishing a new threshold internationally, the U.S. Congress is taking an important step by working to ratify new World Intellectual Property Organization (WIPO) copyright treaties. The WIPO treaties were specifically designed to promote online commerce by ensuring that authors would not lose the right to determine how their works are sold and distributed online. To this end, the WIPO treaties guarantee that copyright protects all copies of a work — whether traditional or digital, permanent or temporary — that have any economic significance to authors, and ensure that works cannot be put on the Internet without the author's consent.

The WIPO copyright treaties also recognize that the use of software or hardware locks to prevent unauthorized access to works is needed to promote the integrity of creative works online. With the single press off a button, one can reproduce thousands of perfect digital copies of a work that took a creator years to produce. Given such ease, many businesses may find that the only way to participate with confidence in the electronic marketplace is to lock out potential thieves. Therefore, technology locks aimed at preventing unauthorized access to works need to be effective and available, and attempts to "hack" through these locks by would-be thieves should be outlawed.

The BSA believes that strong copyright protection in the online world will bring tremendous benefits along the entire chain of e-commerce — not only to developers of goods, but also to online service providers, advertisers, banks, and everyone else with a financial stake in the success of e-commerce. And, of course, the real beneficiaries of strong copyright laws will be consumers in the e-commerce marketplace, who will have access to an astounding number of online goods and services at extremely competitive prices.

Security in the age of the Internet:
The key to privacy and e-commerce

TODAY'S WORLD

The Business Software Alliance (BSA) believes that privacy and security are fundamental values which, in the electronic age, extend to our computer terminals. We want to know that prying eyes won't have access when we send letters, buy goods or services, or store medical records. This is a basic question of security as well — individuals need to control the access to their passcodes and financial information, just as businesses need to secure their trade secrets.

Network users must have confidence that their communications, whether personal letters, financial transactions, or sensitive business information, are secure and private. Access to products with strong encryption capabilities is critical to providing this confidence.

"Encryption" provides computer users with an electronic means of protecting confidential data. Encryption scrambles and unscrambles data, thereby serving as a kind of electronic lock on a high-tech filing cabinet.

Most countries recognize the security needs of computer users — individuals, small businesses, and corporations — and the importance of such security to their personal privacy and business success. They understand that strong security prevents crime. Therefore, they allow computer users to purchase and employ security systems that meet their needs, unfettered by government regulation.

A few countries, however, have imposed export or import controls on strong encryption technology. For example, under current U.S. law, software and hardware computer companies are allowed to export products incorporating only weak encryption capabilities. These policies only serve to stifle technological development and prevent law-abiding computer users from protecting themselves against crime.

Additionally, some government agencies have proposed requiring users to store spare keys to their computer security systems with government-approved third parties — raising serious concerns about privacy protection and building vulnerabilities into security systems.

TOMORROW'S WORLD

Computer users, whether individuals, small businesses, or corporations, are demanding strong security. As with the keys to their homes, access to their medical records, or passcodes to their business information, these consumers want to make their own security decisions. They do not want these decisions dictated to them by governments. Industry has responded, however, to consumer demand for stored data key recovery features that allow the owner of data to retain control over any back-up systems that they employ.

The European Union has heard the message and adopted the European Framework for Digital Signatures and Encryption, which recognizes that regulation of encryption "could well prevent law-abiding companies and citizens from protecting themselves against criminal attacks" and "should be limited to what is absolutely necessary." Furthermore, the Directive recognizes that mandatory "trusted third party schemes are an unnecessary disincentive to electronic commerce."

The U.S. Congress is listening. In the House of Representatives, a bill called the "Security and Freedom through Encryption (SAFE) Act" is under consideration, and a majority of that body has co-sponsored the bill. SAFE would lift outdated export restrictions and reaffirm Americans ability to purchase the strongest encryption software available. Similar legislation has been introduced in the U.S. Senate (the Pro-Code and E-PRIVACY acts).

The Business Software Alliance strongly supports governments which are allowing the marketplace to meet consumer demand, the initiatives in the U.S. Congress, and the European Commission's Directive.

Multiple and discriminatory taxes will limit the potential of the Internet

TODAY'S WORLD

The Internet, a marketplace without boundaries, presents complicated administrative challenges for traditional means of taxation. Someone from Maine can conduct a transaction on a laptop, while sitting in an airport in Texas, purchasing goods from a company in Florida, with delivery of goods in Oregon — a scenario that could lead to multiple taxes on the same transaction. This possibility and the risk of discriminatory taxes unfairly applied only to Internet transactions are among the unknown costs of doing business online.

Taxes specific to the Internet will choke the development of e-commerce. In addition, varied and conflicting tax schemes among states and countries would create confusion and likely be unworkable.

This is true on a larger scale for international online transactions. An international e-commerce transaction may touch numerous national and intranational taxing jurisdictions — increasing the odds that consumers will be overwhelmed by multiple taxes. If nations, states, and localities independently develop Internet taxation before a thorough study of the consequences, consumers will face tax liabilities in a multitude of jurisdictions — in the United States alone, there are more than 30,000 different taxing jurisdictions.

As e-commerce expands — and more business "migrates" to the Internet — governments are examining how best to tax it. Taxing authorities are concerned that e-commerce will erode their tax base, and some urge quick action to impose taxes on e-commerce. However, without a commonsensical approach to Internet taxation, including time to study the situation, e-commerce risks becoming unwieldy, and taxing jurisdictions may lose a potentially huge new revenue source.

The immediate question regarding Internet taxation is: "What governing entity or entities have jurisdiction to tax an Internet transaction?" Governments across the U.S. are considering criteria as diverse as the location of purchaser, location of server, and location of the bank from which funds for purchase are withdrawn. Based on these criteria, multiple jurisdictions could all try to lay a legal claim to the right to tax the same transaction. The result would be a system that would be unfair to consumers and, ultimately, would stifle the growth of online commerce.

TOMORROW'S WORLD

Many policymakers recognize the need to take a closer look at the effects that taxation could have on e-commerce. The U.S. is working with the World Trade Organization to implement an international moratorium on Internet taxation. Countries supporting this effort include Australia, Canada, and Switzerland. The European Union, Japan, South Korea, and others have also indicated their inclination to support this proposal.

The U.S. Congress is currently considering legislation that would place a moratorium on all taxes that uniquely target the Internet. During this moratorium, a temporary commission of state, local, and federal government officials, industry representatives, and consumer advocates would attempt to devise a workable system for state and local governments to tax Internet transactions. While many government officials are inclined to oppose a bill that could restrict their authority to levy taxes, such a step is ultimately in the self-interest of their jurisdictions.

The Business Software Alliance believes that in the absence of a tax moratorium, a morass of competing levies could stifle the potential for economic growth of businesses on the Internet and of revenue for governments. At this writing, Congressional leaders are working to find a compromise version of the bill that will respond to the legitimate concerns of state and local government leaders while preserving the intended effect of the moratorium. Such a compromise must not include loopholes that provide incentives to impose unfair levies during the moratorium. All parties can benefit from the ultimate solution.

Providing parents and consumers effective tools to protect their families and their privacy

TODAY'S WORLD

Spectacular Internet growth has created enormous opportunity for sharing information worldwide and for the development of electronic commerce. However, the real promise of the Internet will only be realized when families, educators, and businesses are assured that they have the tools to protect their children, students, and employees from inappropriate Internet content, and to control the online collection and use of personal information.

Concerns have been raised about the collection of personal data online and the existence of offensive content on the Internet. In both of these instances, user-friendly technical applications are being developed that provide tailored solutions for each individual.

The Business Software Alliance (BSA), believes that the most appropriate and effective way to protect children from offensive online material and to secure personal information is by empowering families and Internet users with technology and choice, and encouraging the online industry to self-regulate by rating web sites for content and posting adequate privacy policies. The U.S. Supreme Court upheld Americans' First Amendment rights by overturning the Communications Decency Act and its regulatory approach to controlling access to online content. This ruling affirmed the software industry view that technological controls in the hands of parents and educators, such as filtering software and online rating systems, combined with responsible parental monitoring and education, are the only truly effective means of controlling access to online content.

Consumer concern over the online collection of personal data is also a major roadblock to realizing the full commercial potential of the Internet. Businesses know that consumers will only fully engage in electronic commerce when they feel confident that their medical, financial, and personal information is being collected in an open and responsible manner and that it is handled securely.

TOMORROW'S WORLD

BSA believes that individual Internet users should and do have control over the content they receive online. Parents can prevent their children from viewing objectionable material, whether sexually explicit or otherwise, by employing inexpensive and easy-to-use blocking and filtering technologies that can filter content based on the individual tastes and values of parents.

Constant product development based on industry standards and rating systems will provide families and consumers with ever more effective tools by which to control access to content. Some content rating systems that are available today are based on the Platform for Internet Content Selection (PICS) — an Internet standard approved by the World Wide Web Consortium and widely available commercially. The software industry, other computer-related high tech industries, consumer groups, and civil liberty advocates have formed the Citizens for Internet Empowerment Coalition to promote technological controls rather than government regulations.

On the privacy side, a range of tools to enable users to control their personal information online will be available based on the Platform for Privacy Preference project (P3P) also developed by the World Wide Web Consortium. In tandem with P3P, the Internet Privacy Working Group, made up of industry representatives, consumer groups, Internet advocates, and online advertisers, has engaged in a ongoing dialogue with the public and policymakers about the best, most secure ways to guarantee personal data protection. Finally, a broad coalition of these same groups are meeting in a number of forums to develop privacy principles that promote consumer choice, access, and means of redress.

Governments should promote competition and deregulation in all telecommunications markets

A high-bandwidth, digital network infrastructure is essential for e-commerce. True competition in all communications markets will accelerate the deployment of new technologies and reduce prices to consumers.

TODAY'S WORLD

Telecommunications is the lifeblood of the American economy. For much of this century, telecommunications has been a powerful enabling technology that has supported explosive growth in finance, computers, manufacturing, and other critical sectors of the economy. The telecommunications infrastructure built to carry voice-telephone traffic has served the U.S. economy well for the last 50 years, but the inherent limits of this technology, and this business model, are now beginning to constrain growth of the economy. Consumers and small and large businesses are continually looking for new ways to conduct business that are cheaper, faster, more reliable, and secure. These consumers are finding that the old model of relying on monopoly telephone companies to deliver services has failed to build an infrastructure to carry the economy into the information age.

TOMORROW'S WORLD

In the information age, nearly all transactions will involve telecommunications. Businesses will look to the Internet to offer goods and services. Consumers and businesses, large and small, will look to the Internet first to buy many goods. Sales of all sorts — from flowers and computers to cars and airline tickets — will be made over the Internet. The convenience, speed, security, and constant availability of the Internet will fuel this explosive growth.

This growth will not materialize, however, unless the telecommunications infrastructure changes dramatically to keep pace with changes in consumer demand. The slow transmission speeds and congestion that are a legacy of an outdated telecom industry must be modernized or consumers and businesses will become frustrated with the "world wide wait."

The Business Software Alliance (BSA) believes that genuine competition in all telecommunications markets will accelerate the deployment of advanced technologies at reasonable prices. Competition in the long distance market in the U.S. over the past decade has demonstrated this point; as the cost of telecommunications services has dropped substantially, service quality and product innovation have been steadily rising. This same model should be applied to domestic local telephone markets as well as to overseas markets. Competition will stimulate incumbents and newcomers alike to take the risk of deploying new equipment and software that is data-friendly (e.g., packet-switched) and enables companies to tap into significant consumer demand for information-intensive services.

Competition will spur innovation and investment, but, given the decades of telephone monopoly, telecommunications markets cannot be immediately deregulated in all aspects. In their historical role as government-created and protected monopolies, many incumbent telephone companies have been slow to offer innovative services and have sometimes not accommodated new entrants who want to compete. BSA believes that a "flash cut" to competition will not address these problems, and that some transitional rules (on the road to full deregulation) are necessary to avoid the possibility that incumbents would continue to delay innovation or frustrate competition.

Market forces should drive the evolution of technology-based solutions for electronic authentication

TODAY'S WORLD

Successful electronic commerce requires parties to be able to engage in business without face-to-face contact or the exchange of hand-signed documents. The absence of traditional formalities such as a handshake or a pen and ink signature may lead some to question the authenticity of business conducted online. To solve these problems, industry has developed electronic authentication systems, including digital signatures, to assure users that parties are who they claim to be and that they have agreed "in writing" with the terms of the transaction.

New products are constantly emerging for authenticating Internet transactions. Governments should promote increased competition in the deployment of these new technologies.

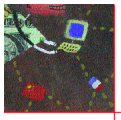
Facilitating growth in electronic commerce requires a judicial acceptance of electronic authentication as equal to handwritten signatures. Policymakers must develop policies that will promote and provide certainty to the use of digital authentication. Sound policy must also address questions of the liability for certifying authorities and parties to digital transactions. In many jurisdictions, electronic authentication methods are already accepted as equal to handwritten signatures — just like forming contracts with telegrams, faxed signatures and other "modern" methods. The Business Software Alliance (BSA) believes that those jurisdictions in which digital signatures are not accepted should take steps to develop policies otherwise, taking care that their approaches remain competitively neutral and do not enshrine a particular technological method in the law.

Definitions of digital signature or other acceptable authentication methods should be broad. Technical requirements should be kept to a minimum so as not to create disincentives for technological developments and modifications. The principle objective of policymakers should be to eliminate uncertainty and doubt as to the legal effect of electronic authentication, while at the same time promoting freedom of contract (i.e., leaving parties free to vary by agreement any new laws or regulations except, of course, any rules essential to protect the public from fraud).

TOMORROW'S WORLD

The more difficult issues relating to digital signatures and other forms of electronic authentication stem from the lack of harmonization among various jurisdictions and the practical problems this creates, such as cross-border recognition of digital signatures and guaranteeing the validity of digital signatures worldwide. To ensure this, there must be a global framework for the validation of digital signatures. At a minimum, mutual recognition of digital signatures generated in foreign countries must be adopted. Such mutual recognition must occur regardless of the regulatory scheme adopted by individual countries. Moreover, any legal regime relating to electronic commerce should be separate from legal regimes relating to the use of encryption for privacy.

The BSA believes that policymakers, businesses, consumers, and other Internet users must come together to develop an international and broad-based approach to deal with the use of digital signatures, but directives, guidelines, laws, and regulations should not include mandatory licensing regimes or excessive certification requirements. Such practices will merely increase the cost of electronic commerce and decrease its use. Throughout the world, digital signatures are already in use and recognized without burdensome governmental regulations. Innovation and development are most rapid when entrepreneurial creativity is not stifled by extensive regulation.



Avoiding barriers to electronic commerce

TODAY'S WORLD

Electronic commerce has the potential to truly "level the playing field," allowing small, medium, and large firms to globalize their business in a remarkably cost-effective way. The cost of establishing a presence on the Internet is minimal. With e-commerce, firms no longer need massive payrolls and foreign offices to compete internationally.

The global vitality of such an electronic marketplace depends on free trade. For years, the United States has shown tremendous vision in recognizing that tariffs, customs duties, and similar barriers to trade raise costs and can price many smaller, competitive firms out of the market. Overall, this harms global prosperity and slows economic development. This is no less true in the online world.

The protection of computer software and other creative property transmitted over the Internet remains problematic for international trade as well. Millions of dollars in pirated software can be downloaded and distributed illegally in a matter of minutes. As technology develops, the speed and ease of transmission of products improves as well. International online piracy can be quick and simple, and consequently, can result in increased costs for legitimate consumers.

TOMORROW'S WORLD

Fortunately, since the completion of the Uruguay Round of world trade negotiations, protection of creative property is clearly covered by international trade rules. The Trade Related Intellectual Property (TRIPs) Agreement of the World Trade Organization (WTO) establishes a basic level of protection worldwide, including enforcement standards, for creative works. This basic level of protection is critical to the fast-paced world of Internet priacy. The Business Software Alliance (BSA) strongly supports quick and thorough implementation of TRIPs by all WTO member nations.

Countries should not raise new barriers to trade for products delivered electronically. Trade barriers such as tariff and customs collections are inherently unworkable in the networked environment. Just as an open and free trading system for tangible goods positively contributes to the U.S. economy, global electronic commerce will expand more rapidly in an environment free from trade barriers.

BSA also supports current efforts, under the auspices of the WTO's Information Technology Agreement II (ITA II), to further liberalize international trade in information technologies. BSA believes that the ITA II negotiations, including discussions on product development, product dissemination, and non-tariff barriers, will expand the world market for U.S. software and other high technology exporters and will promote the growth of e-commerce worldwide.

BSA rejects all recommendations to apply tariffs to computer software distributed electronically for any purpose, even if the product is subsequently transferred to physical media. Imposition of tariffs online would create unnecessary restraints on online trade, stifling growth and innovation in this highly competitive market. Furthermore, it is unclear whether enforcement of such tariffs would be possible. Today, customs officials frequently are unequipped to deal with the current physical movement of goods. It is difficult to imagine customs officials policing the vast Internet for international transactions of software.

As experience shows, any solution to address duties and other trade stifling regulation and barriers must be global to be effective. A patchwork of differing national rules could make it almost impossible for firms to realize one of the principal benefits of e-commerce — the ability to operate globally from a central location. Some countries are actually examining how new taxes would be applied to the Internet and have raised the question in international forums.

BSA believes that applying such rules online is unworkable. The U.S. should take the lead in developing global consensus against these trade barriers to electronic commerce.

Business in the information age:
Ensuring clarity, fairness, and simplicity in online contracts

TODAY'S WORLD

Businesses — small and large — in the United States and abroad carry out millions of transactions each day in the common language of simple contracts. Airlines buy airplane parts, large companies buy fleets of cars, small companies buy office supplies, and consumers buy catalog clothes.

Buyers and sellers need certainty and clarity in their dealings on the Internet and confidence that their contracts are enforceable. Changes to contract law should be made only to ensure freedom-of-contract principles apply in the digital environment.

The Business Software Alliance (BSA) believes that a vibrant commercial marketplace depends on these ordinary deals, along with the freedom of parties to choose with whom they do business and what the details of their agreements are. This "freedom of contract" has facilitated the competitive consumer economy in this country and around the globe. In today's world, most commercial transactions, no matter how large or small, share common traits. They involve the physical exchange of money or credit card, they involve other paper (even if just a receipt), and they usually fit within a common framework of well-established laws regarding the sale of tangible goods and services.

TOMORROW'S WORLD

Commercial transactions in the information age will be similar to the ordinary agreements currently reached everyday, except they will be faster, cheaper, more efficient, more personalized, and often will rely only on electronic interaction. Want to view a shirt and pants side-by-side? Just drag and click and put the two items together on the retailer's web site. Want to order a new software program? Simply select the product you seek from the company's web site, submit your order, and wait for it to be downloaded directly onto your computer.

BSA believes that to facilitate these and other types of transactions on the Internet, contract law in the networked environment should mimic the law of contract in the paper world. This consistency will ensure a greater comfort level among businesses and individuals, speed the transition from costly paper transactions to efficient electronic transactions, and provide the clarity needed to ensure that large and small businesses alike can afford to learn the law of Internet transactions and profit from this new medium. Attempts to alter the principles of current law or create a rigid regulatory regime will stunt the growth of electronic commerce and deny consumers the benefits of the flexible business practices that have resulted in the numerous — and usually quite inexpensive — choices the current marketplace offers.

A few changes will be needed, however, to clear away the underbrush of the aging state statutes that currently govern most contracting. Changes such as eliminating requirements for paper "writings" and manual signatures in contracts, and clarifying what steps are needed to form valid contracts online, will go a long way toward bringing businesses online. The National Conference of Commissioners on Uniform State Laws (NCCUSL, a group of state lawmakers and law professors) and the American Law Institute (ALI, a group of professors and practitioners) are working on a model statute (Article 2B) that will help to open the gates of electronic commerce. Among other things, the statute provides a model for licensing intellectual property online, enhances consumer protections for the information age, and assembles most all of the contract guidelines an individual or company will need to license products on the Internet and throughout the nation. As a follow-up project, an NCCUSL and ALI working group is developing a model code — the Electronic Transactions Act — governing the sale by electronic media of other goods and services.

BSA members include Adobe, Apple Computer, Autodesk, Bentley Systems, Compaq, Digital Equipment Corp., IBM, Intel, Intuit, Lotus Development, Microsoft, Novell, Sybase, and Symantec.

BSA websites: www.bsa.org; www.nopiracy.com